IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 56299-M of 2006

DATE OF DECISION : 27.11.2006

Umesh and others

.... PETITIONERS

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Deepak Nayyar, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

* * *

The petitioners, who are six migrant labourers from different States and are languishing in jail for the last more than four years, have filed this petition under Section 482 of the Code of Criminal Procedure for issuing appropriate directions to the respondent for their release, as they have already undergone the sentence awarded to them.

2. In this case, on a secret information received by the police, FIR No. 101 dated 21.9.2002 was registered at Police Station D Division, Amritsar. The secret information was to the effect that one Yogesh Kumar alias Tinu resident of Amritsar along with certain other persons, including the present petitioners, was present in the Gol Bagh and they were alluring the poor and innocent persons to sell their kidneys by holding a false promise to them to pay money.

3. In the aforesaid FIR, petitioners No.1 to 5 were arrested on 23.9.2002 and petitioner No.6 was arrested on 26.10.2002. Since the petitioners were poor migrant labourers, therefore, they could not seek their bail and throughout the investigation, they remained in custody. After three years of investigation, the challan was filed, and vide order dated 8.10.2005,

the case was committed to the Court of Sessions. On 27.3.2006, charges under Sections 19 (C) of the Transplantation of Human Organs Act, 1994 (hereinafter referred to as `the Act') and Section 120-B IPC were framed against the present petitioners. Charge was also framed against their co-accused under various other Sections of IPC and the Act. They did not plead guilty and claimed trial. However, the petitioners, who were poor persons and were not in a position to defend themselves, pleaded guilty. On their confession, vide judgment dated 27.3.2006, they were convicted for the commission of offence under Section 19 (c) of the Act and Section 120-B IPC. On the same day i.e. on 27.3.2006, they were heard on the quantum of sentence. They were sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- each, in default of payment of fine to further undergo R.I. for six months under Section 120-B IPC and to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- each, in default of payment of fine to further undergo R.I. for six months under Section 19 (c) of the Act. Both the sentences were ordered to run concurrently.

4. The petitioners being very poor persons neither deposited the fine nor filed any appeal against their conviction and sentence.

5. Counsel for the petitioners submitted that petitioners No.1 to 5 completed the sentence of 3 years imprisonment on 23.9.2005 and petitioner No.6 completed his sentence of 3 years imprisonment on 26.10.2005. Thereafter also, they have undergone more than one year of sentence. In spite of that the petitioners have not been released.

6. Reply has been filed by the State, in which the aforesaid factual position has not been disputed. However, learned counsel for the respondent-State has submitted that keeping in view the date of conviction of the petitioners i.e. 27.3.2006, they cannot be released prior to 27.3.2007. Counsel submits that the petitioners can be given benefit of set off of the custody of the under trial period under Section 428 Cr.P.C. with regard to the sentence of imprisonment for 3 years awarded to them, but in view of

the specific exception, they cannot be granted the benefit of set off with respect to sentence of six months imprisonment awarded to them in lieu of default of payment of fine. Counsel further contends that though in the order of sentence, it has been ordered that both the sentences shall run concurrently, but the two sentences of six months each awarded to the petitioners in lieu of default of payment of fine cannot run concurrently and those sentences have to be undergone by the petitioners after the date of their conviction. Therefore, though the petitioners have completed the sentence of three years in the month of September/October, 2005 and have also undergone more than one year thereafter, but they can not be released from the jail before 27.3.2007, the day on which they will complete one year in lieu of default of payment of fine from the date of their conviction and sentence.

7. On the other hand, counsel for the petitioners submitted that the petitioners are poor migrant labourers from different States. They are not in a position to deposit the amount of fine of Rs. 20,000/- each. Even they are not in a position to file appeal against their conviction and sentence. In these circumstances, counsel for the petitioner submits that since the petitioners have undergone more than four years of sentence till date, therefore, this Court, in exercise of the inherent powers under Section 482 Cr.P.C. should reduce the sentence of imprisonment awarded to the petitioners in lieu of default of payment of fine.

8. Keeping in view the facts that the petitioners are very poor persons; are migrant labourers of different States, are languishing in jail for the last more than four years and have been convicted on the basis of their confession, I have decided to invoke the inherent power of this Court under Section 482 Cr.P.C. for reducing the sentence in default of payment of fine awarded to them. In my opinion, the ends of justice will be met if the sentence of six months awarded to the petitioners in default of payment of fine for each of the offence is reduced to the period already undergone, as they have already undergone 8 months of sentence towards sentence in

default of payment of fine, after their conviction on 27.3.2006. Ordered accordingly.

9. This petition is, thus, allowed and the Superintendent, Central Jail, Amritsar, is directed to release the petitioners forthwith.

10. A copy of this order be sent to the Superintendent, Central Jail, Amritsar, for compliance.

November 27, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**